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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,248	12/04/2003	Paul Dicarlo	01194-824001	7802
26161 7590 05/27/2008 FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022				
EXAMINER				
TOWA, REINE T				
ART UNIT		PAPER NUMBER		
3736				
MAIL DATE		DELIVERY MODE		
05/27/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 10/728,248	<b>Applicant(s)</b> DICARLO ET AL.
<b>Examiner</b> RENE TOWA	<b>Art Unit</b> 3736

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 03 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-33.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Max Hindenburg/  
Supervisory Patent Examiner, Art Unit 3736

Continuation of 11, does NOT place the application in condition for allowance because: Applicant contends that Kornberg fails to teach either a stylet or a cannula configured such that axial movement causes rotation. Applicant further contends that Kornberg fails to teach a second part as claimed. These arguments have been considered but have not been deemed persuasive.

In regards to the Applicant's argument that Kornberg fails to teach either a stylet or a cannula configured such that axial movement causes rotation, the Examiner respectfully traverses. The Examiner notes that Kornberg discloses a device wherein a cannula 54 is fixedly attached to a pin 94 such that when energy is provided by spring 130, the pin-cannula assembly is propelled axially forward, such that engagement of the pin 94 through a curved channel 158 within the housing causes both axial translation and rotation of the cannula 54 (see figs. 16 & 28; see also col. 14, lines 45-50). As such, it is indisputable that Kornberg teaches a cannula arrangement such that axial movement of the cannula would undeniably cause rotation of the cannula due to the engagement of the pin 94 with the curved track 158 along the axial length of the device. In fact, the Applicant has NEVER denied such an important fact, which is at the core of Applicant's invention in the Remarks dated December 3, 2007. Moreover, a cursory look at the Applicant's disclosure to determine exactly what type of causal relationship is at play in the claims indicates in par 0021 of the instant disclosure that the claimed mechanism is in fact substantially identical to that of the Applicant; wherein Applicant's stylet 18 includes a pin 36 that engages a curved channel 38 such that axial movement of the stylet 18 causes rotation of the stylet 18 due to the engagement of the pin 36 with the curved channel 38 (see also Applicant's figure 3B). As such, the Examiner respectfully submits that Kornberg DOES teach a cannula configured such that axial movement causes rotation thereof.

In response the Applicant's argument that Kornberg fails to teach a second part as claimed, the Examiner respectfully traverses. Consistent with the Applicant's very own disclosure and partly due to a lack of a better enumeration, the numeral 91 has been used in the Office action generically to represent the entire subassembly at the proximal end of the cannula 54 as better depicted in figure 17, which from the Examiner's Office action has been called the "second part" (see also the Office action dated September 4, 2007). As such, the Office action in part contends that the second part includes both elements 55 and 91 of Kornberg. As such, at page 6, the Office action parsingly recite that the second part includes a projection in contact with a track. Moreover, the Applicant's response appears to be a partial response to the rejection at hand since the Examiner has proposed a first reference (i.e. Clement et al.), which clearly shows a first and second part. The rejection under Kornberg apply primarily to show how the second part of Clement et al. can be modified while keeping the rest of the device substantially intact.

In view of the foregoing, the Applicant's request for reconsideration has been considered but fails to place the case in condition for allowance..